

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 37 of 2002.

U.P.S.R.T.C. through Regional Manager,
Nainital.

...Revisionist.

Vs.

1. Additional District Judge-I Fast Track Court/MACT, Nainital.
2. Kashmira Singh, S/O Gahna Singh, R/O Village Siroli Kala, P.S. Kichha, District Udham Singh Nagar.

... Respondents

Sri A.N. Sharma, learned counsel for the revisionist.
Sri B.K. Gupta, learned counsel for the respondents.

Date June 20, 2006

P.C.: Hon. B.S. Verma, J.

This revision is directed against the order dated 9-4-2002 passed by the Additional District Judge, Fast Track Court/Motor Accident Claims Tribunal, Nainital, (***for short the Tribunal***) in Misc. Case No. 24 of 2000 arising out of Motor Accident Claims Petition NO. 560 of 1993, U.P.S.R.T.C. Vs. Kashmira Singh, by which the application of respondent no.2 dated 5-8-2000, under Order IX, Rule 13 C.P.C., was allowed and the ex-parte award dated 23-10-1998 was set aside.

The revisionist filed the present revision on the ground that summons were sent by the respondent no.1 to respondent no.2 at his address recorded in the Regional Transport Officer's office for appearance before the Tribunal concerned. Since the summons were sent by registered post by the respondent no.1 to respondent no.2 remained undelivered, therefore, subsequently publication was made in the newspaper Dainik Amar Ujala; but the respondent no.2 did not appear before the Tribunal concerned. After the ex-parte decree was passed, an application under Order IX, Rule 13 C.P.C. was moved by the respondent no.2 for setting aside the same and the ex-prate decree was set aside by the Tribunal on the ground that it was admitted fact that no summons was served personal on the respondent no.2 and the Tribunal presumed service on the

respondent. To show his bona fide, the respondent no.2 had deposited 50% of the amount before the Tribunal and he contended before the Tribunal that the vehicle of the respondent no.2 is insured and he was not given opportunity to contest the case, therefore, in the interest of justice, ex-prate decree was set aside by the learned Tribunal subject to payment of cost of Rs. 500/- vide order dated 9-4-2002.

The record reveals that learned Tribunal has allowed the application of the respondent no.2 and if the case is heard after hearing the respondent no.2 on merit, no prejudice is caused to the revisionist. The learned Tribunal has rightly set aside the ex-prate decree. There is no illegality or infirmity or jurisdictional error in the order impugned. There is no merit in the revision.

The revision is hereby dismissed. No order as to cost. However, the Motor Accident Claims Tribunal is directed to decide the claim petition on merit after hearing the respondent no.2 on merit within a period of three months from the date of production of certified copy of this order.

The amount deposited by the respondent no.2 before the learned Tribunal shall not be released till the final decision of the claim petition.

(B.S. Verma, J.)

RCP